

## CTA Client FAQ Sheet

### Spotts Fain, PC

#### Q: What entities must file BOI reports to FinCEN?

**A:** All “reporting companies.” This includes:

- Corporations
- LLC’s
- Companies created by filing a document with Secretary of State or similar office
- Foreign companies registered to do business in the U.S.

#### Q: What entities are exempt from filing BOI reports to FinCEN?

**A:** There are 23 exemptions to “reporting companies” that mostly apply to companies in heavily regulated industries:

1. Securities reporting issuer
2. Governmental authority
3. Bank
4. Credit Union
5. Depository institution holding company
6. Money services business
7. Broker or dealer in securities
8. Securities exchange or clearing agency
9. Other Exchange Act registered entity
10. Investment company or investment advisor
11. Venture capital fund adviser
12. Insurance company
13. State-licensed insurance producer
14. Commodity Exchange Act registered entity
15. Accounting firm
16. Public utility
17. Financial market utility
18. Pooled investment vehicle
19. Tax-exempt entities, such as 501(c)’s
20. Entity assisting a tax-exempt entity
21. Large operating company
22. Subsidiary of certain exempt entities
23. Inactive entity

For further information about the specific requirements for each exemption, see Chapter 1.2 of [FinCEN's Small Entity BOI Reporting Guide](#).

## Q: What is the “large operating company” exemption?

**A:** The “large operating company” exemption may apply to some businesses that are not already in heavily regulated industries. However, there are three criteria that must be met for an entity to be exempt. The basic criteria are that the entity must:

1. employ over 20 full-time employees in the U.S.,
2. have an operating presence at a physical office within the U.S., and
3. have filed a Federal income tax return demonstrating over \$5 million in gross receipts or sales.

For further information about the specific requirements of each criteria of this exemption, see Chapter 1.2 of [FinCEN's Small Entity BOI Reporting Guide](#).

## Q: What does an exempt entity have to do to prove they are exempt?

**A:** The entity does not need to apply for an exemption. An entity that qualifies for an exemption is not required to submit BOI reports to FinCEN. The entity should, but is not required to, implement internal procedures to monitor the entity’s exemption status.

## Q: What if an entity becomes exempt after filing an initial BOI report?

**A:** An entity that filed its initial report that thereafter qualifies for an exemption should file an updated report within 30 days indicating that it is now exempt.

## Q: What if a previously exempt entity ceases to qualify for their exemption? *For example, if a “large operating company” has a decrease in gross receipts, sales, or number of employees that renders the entity no longer exempt?*

**A:** If an entity created before January 1, 2024, realizes that it no longer qualifies for an exemption during calendar year 2024, that entity must file an initial BOI report before January 1, 2025. If an entity created in calendar year 2024, which was initially exempt, loses its exemption in 2024, according to FinCEN’s preamble to the final rule, it will have the benefit of “the longer of the two applicable time frames” (i.e., 90 days rather than 30 days) after it ceases to qualify. If an entity created on or after January 1, 2025, which is initially exempt, later loses its exempt status, that entity must file its initial report within 30 days of when it ceased to qualify for the exemption.

## Q: When is the initial BOI report due?

**A:** For entities created *on or before December 31, 2023*, the BOI reports must be filed on or before January 1, 2025. For **entities created in 2024**, BOI reports must be filed within 90 days of

registration/creation. For **entities created on or after January 1, 2025**, BOI reports must be filed within 30 days of registration.

### Q: What information must be filed in the BOI report?

**A:** Reporting companies must file information about (1) the company, and (2) its beneficial owners. For companies created on or after January 1, 2024, it must also file information about (3) its “company applicants.”

### Q: Who are the “beneficial owners”?

**A:** Beneficial owners are the individuals who own (25% ownership interest threshold) or substantially control the reporting company. Beneficial owners who have “substantial control” are defined as individuals who meet any of the following criteria:

- senior officers;
- authority to appoint or remove certain officers or a majority of directors of the reporting company;
- important decision-makers; or
- any other form of substantial control over the reporting company.

There is no limit on the number of individuals who exercise substantial control over an entity.

### Q: What information must a reporting company file about the company and its beneficial owners?

**A:** The information a reporting company must file about the company is as follows:

- Full legal name
- Any trade names or DBA’s
- Current U.S. address
- Jurisdiction of formation
- IRS Taxpayer ID # (TIN)

The information a reporting company must file about its Beneficial Owners is as follows:

- Full legal name
- Date of birth
- Complete current street address (business address if in course of business)
- Driver’s license number with issuing jurisdiction or U.S. passport number
- Image of identifying document above

## Q: What information must a reporting company file about its company applicants?

**A:** Entities created on or after January 1, 2024 must file information about one to two company applicants. The same information must be filed about company applicants as is required for beneficial owners and includes the following:

- Full legal name
- Date of birth
- Complete current street address (business address if in course of business)
- Driver's license number with issuing jurisdiction or U.S. passport number
- Image of identifying document above

## Q: How often must the reporting company update their BOI report with FinCEN?

**A:** All changes to BOI must be updated within 30 days of the date of the change. This includes changes to:

- DL or Passports
- Addresses
- Names
- DBA's
- Change in ownership interests resulting in new beneficial owners
- Changes in who exercises substantial control
- Death of a beneficial owner

## Q: Must a company report its termination or dissolution?

**A:** No.

## Q: Does the accountant, attorney, or any other individual who helped create the entity need to be listed as the company applicant?

**A:** If the entity is formed in 2024 or beyond, yes. There are two categories of company applicants:

1. Direct Filers
2. Directs or Controls the Filing Action

If an individual directly filed the document that creates or registers a company, their relevant personal information must be included in the company's BOI report. If the individual did not directly file the creation document but was "primarily responsible for directing or controlling the filing of the creation or registration document", that individual is also a company applicant who must be included in the BOI report. No more than two company applicants may be included in the BOI report.

## Q: What are the ongoing responsibilities of “company applicants”?

**A:** Company applicants must update either the entity or their own individual FinCEN identifier with any changes to their reportable information, so that any BOI reports they are included in will remain current. This duty to update will continue presumably as long as the entity is active.

## Q: To get a FinCEN identifier, what do you need as an individual or as a reporting company?

**A:** FinCEN will issue identifying numbers to either individuals or to reporting companies. As an individual, you may electronically apply for a FinCEN identifier on or after January 1, 2024. In the forthcoming application on FinCEN’s website, you must provide the same information required for BOI reports:

- your name
- date of birth
- address
- driver’s license number with issuing jurisdiction or U.S. passport number
- image of identifying document

If reporting companies would like a FinCEN identifier, they may check a box on their initial BOI report to request one.